

REMARKS

In response to the Office Action of September 11, 2003, claims 1, 3, 4, 6, 10, 13, 16, 21 and 23 have been amended and claims 5, 7 and 11 have been cancelled without prejudice. Claims 1 to 4, 6, 8 to 10 and 12 to 23 are now before the Examiner. With respect to the amendments, claims 1 and 10 have been amended to include the limitations of cancelled claims 5 and 11, respectively. Claims 3 and 4 have been amended to more clearly define the subject matter relating to the fertilizer core. Claim 6 has been amended to correct the claim dependency. Claims 13, 16, 21 and 23 have been amended to present the subject matter in proper "use" format.

Each of the Examiner's rejections are addressed below.

Rejections under 35 U.S.C. § 112, second paragraph and 35 U.S.C. § 101

The Examiner has rejected claims 13-14, 16 and 21 as indefinite under 35 U.S.C. § 112, second paragraph and under 35 U.S.C. § 101, for failure to set forth the steps involved in the claimed process. Applicant has amended the claims in question, as well as claim 23 to recite the claimed process using steps, so as to accord with 35 U.S.C. 112 and 35 U.S.C. 101.

Rejection under 35 U.S.C. 102(b)

The Court of Appeals for the Federal Circuit has stated that anticipation requires the presence in a single prior art reference of each and every element of the claimed invention. Lindemann Maschinenfabrik GMBH v. American Hoist & Derrick Co., 730 F.2d 1452, 1458 (Fed. Cir. 1984); Alco Standard Corp. v. Tennessee Valley Auth., 1 USPQ2d 1337, 1341 (Fed. Cir. 1986). "There must be no difference between the claimed invention and the reference disclosure, as viewed by a person of ordinary skill in the field of the invention." Scripps Clinic v. Genentech Inc., 18 USPQ2d 1001, 1010 (Fed. Cir. 1991) (citations omitted).

The Examiner has rejected claims 1 to 4, 9, 10 and 12 as being anticipated, and thus unpatentable over Dall'aglio *et al.* (Surphur, 1999). The Examiner asserts that the reference teaches a sulfur-bentonite clay with ammonium sulfate at the core. It is respectfully submitted that claims 1 to 4, 9, 10 and 12 submitted herewith as amended are patentable over this reference. Please note that Applicant has amended the claims 1 and 10 to clearly specify that the sulfur-bentonite matrix contains a dispersed additional fertilizer material, a feature not taught nor

contemplated by Dall'aglio *et al.* In view of the amendments, it is submitted that the claims in question are fully patentable over Dall'aglio *et al.*

Rejection under 35 USC § 103(a)

The Examiner bears the burden of establishing a *prima facie* case of obviousness. In determining obviousness, one must focus on Applicant's invention as a whole. *Symbol Technologies Inc. v. Opticon Inc.*, 19 USPQ2d 1241, 1246 (Fed. Cir. 1991). The primary inquiry is:

whether the prior art would have suggested to one of ordinary skill in the art that this process should be carried out and would have had a reasonable likelihood of success. . . . Both the suggestion and the expectation of success must be found in the prior art, not in the applicant's disclosure. *In re Dow Chemical*, 5 USPQ2d 1529, 1531 (Fed. Cir. 1988).

The Examiner has objected to claims 5, 7, 8, 11 and 13, asserting it would have been obvious to modify Dall'aglio *et al.* (Sulphur, 1999), in view of Smith *et al.* (U.S. 4,032,319), to use a combination of fertilizers or nutrients to arrive at the current invention. The Examiner clearly acknowledges that Dall'aglio fails to teach the dispersion of the additional fertilizer through out the matrix. Smith *et al.* does teach the use of modifier materials that are added to the coating, however, these materials are used to increase the water solubility of the coating, thus promoting rapid breakdown. The reference does not teach the use of modifier materials to offer time-release properties, as presented in the current invention. In fact, the teaching of modifiers to promote rapid breakdown in effect teaches away from the addition of additional fertilizer material to achieve a time-release effect. As such, one skilled in the art would not have been motivated to combine these references in any way to arrive at the current invention. It is therefore respectfully submitted that the current invention fully distinguishes over Dall'aglio in view of Smith *et al.*

Rejection under 35 USC § 103(a)

The Examiner has objected to claims 6, 14 and 15-23 as obvious and unpatentable over Dall'aglio *et al.* in view of Smith *et al.*, further in view of Boles (U.S. 5,439,497), Sanders (U.S. 6,132,485) and Besson (Sulphur, 1995). As clearly explained above, Dall'aglio *et al.* and Smith *et al.* fail to teach or contemplate the additional fertilizer material added to the matrix for the

purpose of enhancing the time-release properties of the fertilizer granule. It was demonstrated above that Smith *et al.* in fact teaches away from the current invention as this reference teaches how to promote rapid breakdown, which is contrary to the current invention. A review of Boles, Sanders and Besson clearly indicates that these references do not address the deficiency noted above and therefore cannot possibly render obvious the current invention, either taken alone, or in combination. In view of the above, it is submitted that the current invention fully distinguishes over Dall'aglio *et al.* in view of Smith *et al.*, further in view of Boles, Sanders and Besson.

Based on these submissions, Applicants respectfully request withdrawal of the rejections of the present claims.

Conclusions

For the reasons given above, Applicant respectfully requests reconsideration of this application and timely allowance of the pending claims. Applicant submits that the pending claims are in condition for allowance.

This constitutes a request for any needed extension of time and an authorization to charge all fees therefore to deposit account No. 19-5117 if not otherwise specifically requested. The undersigned hereby authorizes the charge of any fees created by the filing of this document or any deficiency of fees submitted herewith to be charged to deposit account No. 19-5117.

Respectfully submitted,

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